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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,015	10/28/2003	Thomas Foo	PI1330USNA	4259

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INVISTA NORTH AMERICA S.A.R.L. THREE LITTLE FALLS CENTRE/1052 2801 CENTERVILLE ROAD WILMINGTON, DE 19808		

EXAMINER	
SACKEY, EBENEZER O	

ART UNIT	PAPER NUMBER
1624	

NOTIFICATION DATE	DELIVERY MODE
09/24/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Kathy.L.Crew@invista.com

<b>Office Action Summary</b>	Application No. 10/695,015	Applicant(s) FOO ET AL.	
	Examiner EBENEZER SACKEY	Art Unit 1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on amendment filed on 07/03/07.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Status of the Claims**

**Claims 1-13 are pending.**

This is in response to applicant's amendment filed on 07/03/07.

Claim 1, has been amended.

### **Claim Rejections - 35 U.S.C. § 103**

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 1-13 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Breikss (U.S. Patent number 5,523,453)('453') in view of Kreutzer et al., (U.S. Patent number

5,512,696)('696'), for the reasons set forth in the previous office action mailed on 01/11/07.

***Response to Amendment***

Applicant's arguments filed 07/03/07 have been fully considered but they are not persuasive. Applicants argue that amended claim 1 recites the use of a byproduct catalyst comprising both iron (II) chloride and manganese (II) chloride which is in contrast to the disclosure of Breikss patent, which teaches the use of discrete Lewis acid compounds, selected from a laundry list of compounds including iron (II) chloride or manganese (II) chloride, and thus, does not teach or suggest the use of a promoter mixture which is a by product of a method for producing titanium tetrachloride from titanium ore. Contrary to applicant's assertion, the source of the iron (II) chloride and manganese (II) chloride cannot be considered as a patentable distinction on which a patent can be granted. Breikss simply teaches a hydrocyanation process in which a Lewis Acid promoter catalyst is used. Note among the preferred promoters are iron (II) chloride and manganese (II) chloride. See column 12, lines 26-39. Applicant's next argue that one of ordinary skill in the art would question whether the byproduct promoter would not contain at least one material which could not act as a catalyst poison or produce an otherwise deleterious effect on the desired process. This argument is not germane because it is well known that byproducts are normally removed from process stream or filtered in some way as done herein.

Applicants next argue that the office has not made sufficient allegations to establish a *prima facie* case of obviousness with regard to claims 2 and 3-10. In

response, the issue of the source of iron (II) and manganese (II) chlorides has already been addressed in the previous office action mailed on 01/11/07. See *In re McLaughlin* cited previously. Additionally, note *KSR International Co. v. Teleflex Inc.*

Applicants have not provided any evidence to demonstrate the criticality of the source of the iron (II) and manganese (II) chlorides, thus, a mere argument or conclusionary statements by applicants will not suffice. Note *Geisler*, 116 F.3d at 1470, 43 USPQ 2d at 1365. Note that Kreutzer et al. teach the ligand of claims 10 and 11. See column 2, lines 20-32. Hence, for the reasons of record, the rejection of claims 1-13 is maintained.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to E. Sackey whose telephone number is (571) 272-0704.

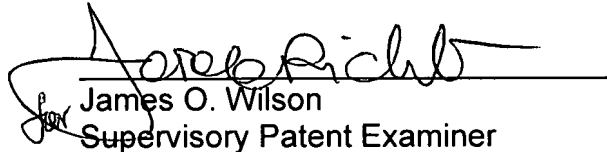
Art Unit: 1624

The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson, can be reached on (571) 272-0661. The fax phone number for this Group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

EOS  
September 14, 2007

  
James O. Wilson  
Supervisory Patent Examiner  
Art Unit 1624, Group 1600  
Technology Center 1